



**First-tier Tribunal for Scotland (Housing and Property Chamber)**

**Decision: Section 43 Tribunals (Scotland) Act 2014 and Rule 39 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 as amended**

**Chamber Reference FTS/HPC/RT/19/3633**

**Title number: Subjects registered in the Land Register of Scotland under title number MID101053**

**Property address: 3F1, 13 Gillespie Crescent, Edinburgh, EH10 4HT ("the Property")**

**The Parties**

**City of Edinburgh Council, East Neighbourhood Office, 101 Niddrie Mains Road, Edinburgh, EH16 4DS ("The Third Party Applicant")**

**Edinburgh Holiday and Party Lets Limited (SC577943), PO Box 46, Mail Box 46, 2 Corstorphine High Street, Edinburgh, EH12 7ST, sometimes trading as EHPL Ltd. whose sole director is Mr Mark Edward Fortune ("The Landlord")**

**Tribunal Members:**

**H Forbes (Legal Member)**

**C Jones (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") hereby determines that the application for review made by the Landlord is wholly without merit and refuses the application.**

**Background**

1. The Housing and Property Chamber issued a decision of the Tribunal dated 8<sup>th</sup> November 2022 determining that the Landlord has failed to comply with the duty imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006 ("the Act") in relation to the Property.

2. The Tribunal made a Repairing Standard Enforcement Order (“RSEO”) dated 8<sup>th</sup> November 2022. The decision and RSEO were issued to parties on 9<sup>th</sup> November 2022.
3. By email dated 15<sup>th</sup> November 2022, the Landlord submitted an application as follows:

*Please take this letter as formal notice of a Review and or Appeal to the Upper Tribunal under the rules. It is respectfully suggested that the legal member Ms H Forbes has erred in law in regards this application.*

*Within the documents issued dated 8th November 2022 the Tribunal correctly names the parties and in regards the “Landlord” as Edinburgh Holiday and Party Lets Ltd [EHPL], for completeness a company registered in Scotland SC577943. There is clear case law in regards a company being its own legal identity.*

*It has become apparent that on a number of occasions contrary to Rule 9, Ms Forbes conducted hearings, issued documents or other without giving the “landlord” EHPL an invitation, copies of documents and or opportunity to defend itself. The Tribunal rules are clear and it is a fact that the Tribunal one more than one occasion excluded EHPL.*

*Further under the rules, the applicant MUST send a letter to the “landlord” before making an application and the tribunal cannot make any rulings or indeed accept an application before such has been produced. The applicant must also supply a copy of any document referred to as a lease. Rule 42 is clear that the landlord must have been notified of the works and a copy of said lodged with the applications. Ms Forbes erred in allowing the application to proceed in regards submitted documents and evidence heard In the above case documents were submitted under “TENANCY AGREEMENT” by the applicant – these were various documents from EHPL additionally we believe the applicant submitted oral evidence that a Mr James Clegg’s landlord was 4m Ltd – a company registered in Scotland and again its own legal identity under the well-founded Doctrine. Evidence to housing benefits obtained and a lease from 4m Ltd had been seen by submitted to Edinburgh City Council to support the benefit application. Note 54 – Decision 17/5/21*

*Within the application papers a document ‘NOTICE TO LANDLORD’ was submitted, this appears to be a letter dated 8th October 2019 in the name of Mark Fortune and the words ‘I am writing to you, as you are listed as the registered owner’ – we understand this wording was used because Mr Ross had previously written to the incorrect owner of a property!*

*Notwithstanding Mr Fortune is not the landlord, he is not the ‘landlord’ referred to in the ‘Tenancy Agreements’ section nor the oral and written*

*evidence in regards Mr James Clegg. In short we the 'landlord' as determined in your correspondence dated 8th November 2022 nor 4m Ltd as detailed above and as such there has been NO confirmation or other that both limited Companies had been sent or delivered the relevant notice. Ms Forbes again erred in law as having had confirmed by Mr Ross [the applicant] that he had only ever delivered a letter to Mark Fortune and Ms Forbes ought to have been aware Mr Fortune is his own legal identity and clear case law separates Mr Fortune from any company he may or may not have been a director. For the application to have been valid the applicant should have supplied the Notice letters issued to Edinburgh Holiday & Party Lets Ltd and 4m Ltd, the applicant cant be excused under the view he thought the owner was the landlord has his application and evidence clearly confirmed his position was EHPL were the landlord of some residents, 4m Ltd were the landlord for Mr Clegg and in essence to cover all basis 3 letters could have been issued.*

*Ms Forbes further erred in law by not placing importance on the words in the letter dated 8<sup>th</sup> October 2019. Had Mr Ross believed this was a letter to a landlord he would have written, 'I am writing to you as the landlord' he did not he used the word 'owner' and did so as he wrongly thought the true landlord EHPL had stopped trading. It appears clear Ms Forbes has been unable to detach her true feelings in regards Mr Fortune and as such has erred in her profession judgment, Ms Forbes cannot with integrity confirm previous comments made to her as detailed in her written notes affected her ability to be impartial.*

4. By emails dated 18<sup>th</sup> and 25<sup>th</sup> November 2022 the Landlord was asked to confirm the remedies they were seeking, as follows:

You state that this is 'formal notice of a review **and or** appeal'. Please clarify exactly what you are applying for, ensuring that you comply with the requirements of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, particularly Rule 37 (Application for Permission to Appeal) and Rule 39 (Review of a Decision).

5. By email dated 28<sup>th</sup> November 2022, the Landlord stated as follows:

*We are wishing the decision be reviewed. If the tribunal is unwilling we will seek permission to appeal to the upper tribunal If permission is not granted we will seek the upper tribunal direct on a the point of law*

6. Despite the delay in confirming the remedy sought, the Tribunal took the view that the original application for review fell within the time limits for review under section 43 of the Tribunals (Scotland) Act 2014 and Rule 39 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, as amended ("the Rules").

## **Decision**

7. The Tribunal considered the representations made by the Landlord and considered that each point raised by the Landlord has been clearly addressed and set out in detail in the decision of the Tribunal.
8. In all the circumstances, the Tribunal can identify no basis to change the Decision.
9. The Tribunal considers the application for review to be wholly without merit in terms of Rule 39(3) of the Tribunal Procedure Rules. The application is refused.
10. This Decision is not subject to appeal.

# H Forbes

Legal Member/Chair

Date: 30<sup>th</sup> November 2022